General Terms of Use

The following terms and conditions (the "Terms and Conditions") apply to the use of the e-Public Procurement System (ePPS Website) **http://www.etenders.gov.mt/** (the "Service(s)") and to any other correspondence that you may post to this Website or send via email in response to any tendering process on the Website.

Your agreement with the Government of Malta (GoM – Represented by any Contracting Authority listed in Schedule 1 of the Malta Public Procurement Regulations 2010) will also include the terms of any Legal Notices applicable to the Services, in addition to the General Terms of Use, such terms are referred to as the "Additional Terms". Contracting Authority and Economic Operator shall have the same meaning as defined in the Public Procurement Regulations 2010. Furthermore, the Terms of Use for Economic Operator Users and the Terms of Use for Contracting Authority Users (available at the end of this document) are also applicable according to your role within the Services. All of these are referred to below as the "Terms of Use". Where Additional Terms apply to a Service, these will be accessible for you to read either within, or through your use of that Service.

The General Terms of Use, together with the Additional Terms, the Terms of Use for Economic Operator Users and the Terms of Use for Contracting Authority Users form legally binding agreements between you and the GoM in relation to your use of the Services. It is important that you take the time to read them carefully. Collectively, these legal agreements are referred to as the "Terms of Use".

If there is any contradiction between what the Additional Terms say and what the Terms of Use say, then the Additional Terms shall take precedence in relation to that Service.

Your use of the ePPS Website constitutes acceptance of the following Terms and Conditions. If you do not agree to these Terms and Conditions do not use the Website.

1. Your relation with the GoM

1. Using the Website implies that:

1.1 You are permitted to use the Website in accordance with these terms and conditions and for a lawful and proper purpose.

1.2 You may not:

- 1.2.1 use the Website which may infringe the rights of the GoM or any third party;
- 1.2.2 post, transmit or disseminate any information on or via the Website which is obscene, defamatory or in any other way unlawful;
- 1.2.3 obtain or attempt to obtain unauthorised access to the Website or do anything to interfere with the functionality of the Website;
- 1.2.4 alter, deface or interfere with the Website in any way;
- 1.2.5 attempt to copy, sell, lease, rent, sub-licence or grant any rights in any part of the Website;
- 1.2.6 post any information for which you do not hold the necessary licences;
- 1.2.7 post any material which could be technically harmful to the Website.

1.3 You may not use the Services and may not accept the Terms of Use if (a) you are not of legal age to form a binding contract with the GoM, or (b) you are a person barred from receiving the Services under the laws of Malta or other countries including the country in which you are resident or from which you use the Services.

1.4 The GoM will fully co-operate with the law enforcement authorities and may disclose personal data relating to you where there has been a breach of paragraph 1.2.

2. Your use of the Service

2.1 GoM provides the information and guidance on the Website for the purposes detailed on the relevant page of the Website. The material on this website is covered by the provisions of the Copyright Act, the laws of Malta, policies and regulations.

2.2 You are permitted to view, print and download information from the Website, provided that you comply with these terms and conditions. For this purpose it may be reproduced without charge or further permission from the Government of Malta provided that, the reproduced materials are true copies of the originals and that the Government of Malta is identified as the source. The reproduced materials shall not in any way be represented as an official version, nor as having been produced in affiliation with or with the endorsement of the Government of Malta.

2.3 You are not permitted to:

- 2.3.1 alter or modify the documents or graphics, except as permitted in any accompanying guidance to the documents;
- 2.3.2 delete text from graphics, except where permitted;
- 2.3.3 use any logos or trademarks belonging to the GoM except in accordance with the relevant trade mark licensing scheme.

2.4 You may not use any “deep-link”, “page-scrape”, “robot”, “spider” or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Services or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Services or any Content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Services. The GoM reserves the right to bar any such activity.

2.5 You may not attempt to gain unauthorized access to any portion or feature of the Services, or any other systems or networks connected to the Services or to any GoM server, or to any of the services offered on or through the Services, by hacking, password “mining” or any other illegitimate means.

2.6 You may not probe, scan or test the vulnerability of the Services or any network connected to the Services, nor breach the security or authentication measures on the Services or any network connected to the Services. You may not reverse look-up, trace or seek to trace any information on any other user of or visitor to the Services, or any other customer of the GoM, including any Service account not owned by you, to its source, or exploit the Service or any service or information made available or offered by or through the Service, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information, as provided for by the Services.

2.7 You agree that you will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Services or MITA’s systems or networks, or any systems or networks connected to the Service or to the GoM.

2.8 You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Services or any transaction being conducted on the Service, or with any other person’s use of the Service.

2.9 You may not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to the GoM on or through the Service or any service offered on or through the Service. You may not pretend that you are, or that you represent, someone else, or impersonate any other individual or entity unless authorised.

2.10 You may not use the Service or any Content for any purpose that is unlawful or prohibited by the Terms of Use, or to solicit the performance of any illegal activity or other activity which infringes the rights of the GoM or others.

3. Access and availability of the Website

3.1 The GoM will use all reasonable endeavours to ensure that the Website is available to users 24 hours a day, 7 days a week. However, the GoM shall not be liable if for any reason the Website is unavailable for a period of time.

3.2 The GoM reserves the right to temporarily suspend the Website in the event of maintenance, repair or for any other reason, where it is considered necessary by the GoM.

4. Changes to the Website

4.1 The GoM may make improvements and changes to the Website, the information contained in the Website or any services provided by the GoM. The GOM reserves the right to make such changes without notice and without liability to you. Your continued use of the Website constitutes acceptance of the changes.

4.2 The GoM may amend the Terms and Conditions at any time without notice and you should therefore check the Terms and Conditions regularly. Your continued use of the Website constitutes acceptance of the changes.

5. Links to other Websites

5.1 The Website may contain links to other websites of other authorities, institutions or (public or private) organisations, over which this Service has no control, neither from the point of view of the content, nor from their technical functioning. Such links are provided for convenience only. The GoM does not imply responsibility for, or approval of the information contained in those sites. All warranties, whether express or implied, relating to the accuracy, availability, reliability or content of such information, text, graphics and hyperlinks, are excluded.

5.2 If you access any third party website you do so entirely at your own risk. It is important for you to note that upon linking to another site, you are no longer in our site and you become subject to the privacy policy of the new site.

5.3 The inclusion of any company's or trader's name within the pages should not be construed as a recommendation of that company's or trader's products and / or services.

6. Links to this Website

6.1 You may create a link to the Website, provided that the Website pages are loaded into the user's entire window and not loaded into frames on your site.

7. Limitation of Liability

7.1 The GoM and any other party involved in creating, producing, maintaining or delivering the Website, exclude all liability and responsibility for any loss or damage that may result to you or a third party (including, without limitation, any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, use of money, or loss or damages arising from or connected in any way to business interruption, and whether in tort, contract or otherwise). The GoM also excludes liability for the use or inability to use the Website or any materials on it, or any websites linked to the Website.

7.2 The GoM shall not exclude or limit any liability which cannot be excluded or limited under applicable law.

8. Disclaimer of Warranties

8.1 The Website is provided "as is" without any representation or warranties (either expressed or implied), conditions or other terms of any kind. The GoM exclude all liability for any loss or damage to the full extent permitted by law.

8.2 The GoM makes every effort to ensure, but does not guarantee, and makes no warranties as to the accuracy, accessibility, integrity and timeliness of the information contained on this web-site. The GoM assumes no liability or responsibility for any errors or omissions in the content of this site and further disclaims any liability of any nature for any loss howsoever caused in connection with using this website. The GoM reserves the right to make changes to these materials at any time without notice. It is your responsibility to check the Terms of Use periodically for changes. Your continued use of the Services following the posting of changes will mean that you accept and agree to the changes. As long as you comply with the Terms of Use, The GoM grants you a personal, nonexclusive, non-transferable, limited privilege to enter and use the Services.

8.3 The GoM shall not be responsible for any disruption of the Website or loss or corruption of any information whilst in transit or when downloaded onto any computer system.

8.4 The GoM makes every effort to check and test the material at all stages of production; however, the GoM cannot accept any responsibility for any loss, disruption or damage to your data or your computer which may occur whilst using material derived from this website.

9. Privacy Policy

9.1 The GoM will not collect any personal information about you as a visitor unless you provide it voluntarily. Any personal information you communicate to us is kept within the Malta Government Network (gov.mt) itself, in accordance with the Data Protection Act 2001.

9.2 Through your participation in any tendering process or when you send us a mail through the Contact Us page, GOM will record your e-mail address and other information submitted by you only to respond to your message. Any personal information you communicate to us shall be treated as confidential to the Malta Government Network (MAGNET) and shall not be shared, rented, or sold to any other organisation without your consent. Upon request, GOM will provide you with access to the personal information that is being kept about you and will correct personal information that you state is erroneous.

9.3 This privacy policy only covers this website. Links within this site to other web-sites are not covered by this policy.

10. Accessibility Statement

10.1 All effort has been made to ensure that this website conforms to the accessibility requirements and recommendations of the W3C accessibility recommendations, and to ensure that the website caters for individuals with specific disabilities.

11. System Requirements

11.1 In order to be able to make full use of the Service, the following system requirements must be met:

11.1.1 Technical Requirements

- Compatible web browsers:

- Internet Explorer (version 7 or higher) - In case Internet Explorer 7 is used on a Windows Vista operating system, please ensure that JRE version 1.6.0_07 (or higher) is installed
- Mozilla Firefox (version 2 or higher)
- Netscape Navigator (version 7.2 or higher)

- Javascript must be enabled
- Session Cookies must be enabled
- Screen Resolution must be set at 1024 x 768 (or higher)
- Adobe Flash Player (version 8 or higher) must be installed
- Java Runtime Environment (version 1.6 or higher) must be installed.

11.1.2 Other requirements

- Access to the Internet through HTTP/HTTPS
- A valid e-mail address

12. Cookies

12.1 The Service uses session cookies to temporarily identify user actions when using the Service. A session cookie is information stored in your browser's cache which is only available to the Service for the duration of your browser's lifetime window (session) when accessing the Service and no other site can request this information. The Service may also use cookies for Maltese e-ID users to verify authentication requirements. To further ensure that the information stored by the session cookie is cleared from cache, it is highly recommended that you close your browser when you finish using the Service and that you follow the relevant instructions set by your browser's supplier/management to deal with cookies.

13. General

13.1 The Terms and Conditions may be varied by the GoM only.

13.2 You may not assign or transfer any rights or obligations under the Terms and Conditions. The GoM may assign or transfer any rights or obligations to any third party.

13.3 Headings are inserted for your convenience and shall not affect the interpretation of the Terms and Conditions.

13.4 If any part of the Terms and Conditions are found to be invalid, unenforceable or illegal, the other provisions shall remain in force.

13.5 Reference to any statute or statutory provisions includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

13.6 These terms and conditions shall be governed by and construed in accordance with the laws of Malta and any dispute arising under these terms and conditions shall be subject to the exclusive jurisdiction of the Courts of Malta. Omission by the GoM to exercise any right under these terms and conditions will not constitute a waiver of such right unless expressly stated by the GoM in writing.

Last updated 14th July 2011

Terms of Use for Economic Operator Users

To uphold the quality and reputation of the Services as defined in the General Terms of Use, your use of the Service is subject to the General Terms of Use, and to these Terms of Use for Economic Operator Users, collectively referred to as Terms of Use. If you are found to be in violation of the Terms of Use at any time, as determined by the Government of Malta (GoM) in its sole discretion, we may warn you or suspend or terminate your account and Legal Actions may be initiated.

If you find anything on the website that causes concern please Contact Us.

1. Online Registration

1.1 Online Registration through www.mygov.mt (Maltese I.D. holders) Maltese I.D. holders are required to obtain a Maltese Electronic Identity (e-ID), and / or a Maltese Organisation e-ID (only applicable to registered Organisations), subscribe to the Service through www.mygov.mt and log on to www.etenders.gov.mt with their e-ID credentials.

The types of Identifiable Entities that may apply to be recognized as Organisations for the purpose of e-ID, and therefore **need to subscribe** through www.mygov.mt are: -

- Organisations whose Legal Personality is established through registration with the Malta Financial Services Authority. Such Organisations include but are not limited to Public Limited Liability Companies, Private Limited Liability Companies, Private Exempt Companies, Single Member Companies, Partnerships en commandite, Partnership en nom collectif, SICAVs, INVCOs;
- Organisations whose Legal Personality is established through registration with the Registrar for Legal Persons within the Land and Public Registry Division of GoM. Such Organisations include but are not limited to Civil Partnerships, and Foundations;
- Legal Entities who are not registered with either one of the above mentioned Official Registers but have place a notification with the Registrar for Legal Persons – Notified Organisations, may apply to be recognized as Organisations for the purpose of the e-ID. These include but are not limited to Civil Partnerships.

For more information about the e-ID, you may visit www.mygov.mt. As a holder of the e-ID you will be deemed to have agreed to these Terms of Use upon subscribing to the electronic service through MyGov.

1.2 Online Registration through www.etenders.gov.mt (non Maltese I.D. holders).

Online registration through www.etenders.gov.mt is open to individuals and organisations that are not eligible to obtain the Maltese e-ID. Individuals and organisations that are eligible to apply for an e-ID and attempt to register through www.etenders.gov.mt will be violating these Terms of Use.

In case your organisation does not have a profile within the Services, you will need to provide information both for your organisation and your personal data.

When you register an organisation, you will be designated as its administrator for the purpose of www.etenders.gov.mt. Upon finalisation of the registration process, you will receive an email indicating how to finalise the registration process. You will be request to print the document that will be attached to

the email received, sign and stamp it, and send it back to the System Administrator. This process is followed in order for the GoM to verify that your registration is valid and eligible, particularly that you can truly register online (and not through e-ID), and to ensure that you or your organisation have indeed not already registered in the past within the Service, thus limiting the possibility of double registrations.

This preliminary validity check does not constitute by any means an approval by the GoM for the Economic Operator to take part in a public procurement competition, by replacing the formal selection and exclusion criteria foreseen by law. Furthermore, passing the preliminary validity check does not constitute a formal guarantee by the GoM of the legal status and validity of the Economic Operator. This preliminary validity check is primarily followed in order to monitor the data entered within the Services, the Economic Operators registered within it and is a safety net for data format, uniformity and compliance.

You will need to activate your account through a transaction number provided via e-mail. Such activation will be necessary during your first login, as well as, any time an administrator modifies any critical information within your account.

In case you are representing an Economic Operator that already has a profile within the Services, then it will be the administrator of that organisation that will be responsible to create your account on your behalf, by entering your details within the Services.

You should check the details set out in your registration on receipt and promptly notify the GoM if incorrect or improper information has been created. You should change your password at first login to the Services. In all cases, you will be allowed to manage your personal information once your account is activated.

2. Your obligations

As a registered user, you shall:

a. agree to keep your login credentials (username and password) and transaction codes relating to the Service confidential. You are responsible for the security of your password and should avoid any abuse. All the activities carried out through the Services, with the use of your username and password, are attributed to you.

b. You further agree to take all reasonable measures to prevent the loss, disclosure, modification or unauthorised use of your username, password and transaction codes relating to the Service, and undertake to remain the sole holder of these credentials. In case of loss or suspicion of a breach of confidentiality, you should contact the administrator of your organisation or the GoM, as soon as possible. You acknowledge that the GoM does not keep a copy of your password or transaction codes.

c. immediately notify the GoM if you become aware that your login credentials are compromised, or there is a substantial risk of compromise;

d. ensure that all information provided to the GoM in relation to the generation and issuance of your user account (including all information submitted by you during the e-id registration process) is true, complete and up to date;

e. immediately update your user account information if any contact information is modified;

f. make use of your user account only for the purposes for which it was issued and within the usage and reliance limitations as specified in this Agreement and all other applicable laws, agreements and terms and conditions of use;

g. promptly notify the GoM of any breach of security related to the Services, including but not limited to unauthorized use of your password or account. To help ensure the security of your password or account, please sign out from your account at the end of each session.

h. Take full responsibility to submit the electronic documentation required well before the tender submission deadline in order to avoid last minute upload restrictions. In this regard, tender offers must be fully uploaded/accepted by the Electronic Public Procurement System (ePPS) prior to the indicated deadline for submission of offers, that is, tenders in transit upon tender submission deadline will be rejected by the system. You agree that the GoM will not be responsible for late submissions due to reasons outside its control (such as Internet latency, service unavailability, online payment failure, Internet access).

i. Agree that unless otherwise indicated, a tender offer above 100 MB will not be accepted by the system.

j. Agree to use the latest Tender Preparation Tool (TPT) to complete the Tender Structure (tender response format) which tool can be downloaded from the http://etenders.gov.mt portal. Tender offers created using older versions of the TPT will not be accepted by the system and will result in the rejection of the offer.

k. Agree that you read the EO User Manual provided within the help page of the Website and you are aware of any online tender submission methods (such as 1 or 2 phase tender submission methods) which may be set by Contracting Authorities. You further agree that it is your responsibility to fully understand the online tender submission processes.

3. Prohibited Actions

You may not carry out any activity which is in breach of any clause under the laws of Malta and the European Union or the laws of other countries including the country in which you are resident or from which you use the Services. You may not promote or carry out any unauthorised activities against the scope of the Services, which include, but are not limited to:

- Generate or facilitate unsolicited commercial messages. Such activity includes, but is not limited to sending email in violation of any applicable anti-spam law.
- Imitating or impersonating another entity/person or his, her or its email address, or creating false accounts.
- Misrepresent yourself or the source of any information.
- Data mining the Services or any web property.
- Selling, exchanging or distributing to a third party any of the rights granted to you through the Services.
- Send, upload, distribute or disseminate or offer to do the same with respect to any unlawful, defamatory, harassing, abusive, fraudulent, infringing, obscene, or otherwise objectionable content.
- Intentionally distribute viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or any other items of a destructive or deceptive nature.
- Conduct or forward pyramid or similar schemes.
- Transmit content that may be harmful to minors.

- Illegally transmit another's intellectual property or other proprietary information without such owner's or licensor's permission.
- Use the Services to violate the legal rights (such as rights of privacy and publicity) of others.
- Promote or encourage illegal activity.
- Interfere with other users' enjoyment of the Service.
- Create multiple user accounts in connection with any violation of the Agreement or create user accounts by automated means or under false or fraudulent pretences.
- Sell, trade, resell or otherwise exploit for any unauthorized commercial purpose or transfer any Services account.
- Modify, adapt, translate, or reverse engineer any portion of the Services.
- Remove any copyright, trademark or other proprietary rights notices contained in or on the Services.
- Reformat or frame any portion of the web pages that are part of the Services.
- Use the Services in connection with illegal peer-to-peer file sharing.

4. Refund Policy

Claims for refunds of the fees paid for downloading tender document from www.etenders.gov.mt and / or for submissions of bids through the same website will be received by the relevant Contracting Authority that issued the tender document. Economic Operators must submit an electronic copy of the relevant EC transaction containing the full details of the payments (but not inclusive of debit/credit card number) and the reasons for requesting the refund. The Contracting Authority reserves the right not to entertain claims for refunds where the Economic Operator does not provide the required information.

It is at the discretion of the Contracting Authority to accept or reject claims with or without reason.

5. Written Communications

The provision of this Service entails that the principal means of communication with you will be mainly electronic. The GoM will contact you by email or provide you with information by posting notices on the Service. You agree to electronic communications and acknowledge that all tender, contract, notice and other related communication that the GoM provides electronically are deemed as equivalent as paper communications.

The service may dispatch automated notifications in the form of email and / or SMS (which may be set by you through the Service itself). The GoM does not assume any responsibility for the non-delivery of such automated notifications which can be attributed to a number of reasons outside its control. It is your responsibility to ensure that your e-mail client's configuration is properly set (such as "email anti-spamming" rules) to allow the receipt of email notifications from the Service.

6. Non Repudiation

As a registered user, you agree that any actions performed by means of your login credentials (like communicating with the GoM, purchasing a tender document or paying a participation fee, submitting an online tender, participating in an electronic auction, and submitting a bid in an electronic auction) will be attributed to you.

7. Security

You must promptly notify MITA of any breach of security related to the Services, including but not limited to unauthorized use of your password or account. To help ensure the security of your password or account, please sign out from your account at the end of each session.

8. Data Protection

The GoM shall process all personal data according to the Data Protection Act as well as any other applicable law or guidelines published from time to time. The GoM shall not transfer any personal data to any other third party unless consent to do so is received from you, or the GoM is required to disclose such data by law. As data subject, your rights under the Data Protection Act shall apply.

9. Account Termination

The Terms of Use will continue to apply until terminated by either you or by GoM as set out below.
If you want to terminate your use of the Service, you may do so by:

(a) notifying the System Administrator at any time, or,
(b) in case of e-ID use, unsubscribe from www.mygov.mt.

The GoM may at any time, terminate its legal agreement with you if:

(a) you have breached any provision of the Terms of Use (or have acted in manner which clearly shows that you do not intend to, or are unable to comply with the provisions of the Terms of Use); or
(b) the GoM is required to do so by law;
(c) the Service Provider with whom the GoM offered the Services to you has terminated its relationship with the GoM or ceased to offer the Services to you;
(d) the GoM is transitioning to no longer providing the Services to users in the country in which you are resident or from which you use the service; or
(e) your Organisation's Management within the Service de-activates your account or your account is automatically de-activated by the Service due to reaching the number of failed login attempts set by the Service Administrator.

When the Terms of Use come to an end, all of the legal rights, obligations and liabilities that you and the GoM have benefited from, been subject to (or which have accrued over time whilst the Terms of Use have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of the Laws of Malta shall continue to apply to such rights, obligations and liabilities indefinitely.

Last updated 14th July 2011

Terms of Use for Contracting Authority Users

To uphold the quality and reputation of the Service as defined in the General Terms of Use, your use of the Service is subject to the General Terms of Use, and to these Terms of Use for Contracting Authority (CA) Users, collectively referred to as Terms of Use. If you are found to be in violation of the Terms of Use at any time, as determined by the Government of Malta (GoM) in its sole discretion, you may be warned and your account may be suspended or terminated and legal proceedings may be initiated.

1. Registration

You will receive your login credentials (user name and password) by the Administrator. You should check the details set out in your registration on receipt and promptly notify the Administrator if incorrect or improper information has been created. For security reasons, you will need to activate your account through a transaction number provided via e-mail. Such activation will be necessary during your first login, as well as, any time an administrator modifies any critical information within your account. You will be allowed to manage your personal information once your account is activated. You should change your password at first login to the Services.

2. Your obligations

As a registered user, you shall:

a. agree to keep login credentials and transaction codes relating to the Service confidential. You are responsible for the security of your password and should avoid any abuse. All the activities carried out through the Services, with the use of your username and password, are attributed to you.

b. agree to take all reasonable measures to prevent the loss, disclosure, modification or unauthorised use of your username, password and transaction codes relating to the Service, and undertake to remain the sole holder of these credentials. In case of loss or suspicion of a breach of confidentiality, you should contact the administrator of your organisation or the System Administrator, as soon as possible. You acknowledge that the GoM does not keep a copy of your password or transaction codes.

c. ensure that all information provided to the GoM in relation to the generation and issuance of your user account is true, complete and up to date;

d. immediately update your user account information if any contact information is modified;

e. Ensure that any notices dispatched through the Services on the EU Tenders Electronic Daily are published. You are to promptly notify the System Administrator should a notice not be published within 5 days from dispatch;

f. make use of your user account only for the purposes for which it was issued and within the usage limitations as specified in this Agreement and all other applicable laws, agreements and terms and conditions of use;

g. promptly notify the GoM of any breach of security related to the Services, including but not limited to unauthorized use of your password or account. To help ensure the security of your password or account, please sign out from your account at the end of each session.

3. Prohibited Actions

You may not carry out any activity which is in breach of any clause under the laws of Malta and the European Union. You may not promote or carry out any unauthorised activities against the scope of the Services, which include, but are not limited to:

- generate or facilitate unsolicited commercial messages. Such activity includes, but is
- not limited to sending email in violation of any applicable anti-spam law.
- imitating or impersonating another entity/person or his, her or its email address, or
- creating false accounts.
- data mining the Services or any web property (including MITA's).
- selling, exchanging or distributing to a third party any of the rights granted to you
- through the Services.
- send, upload, distribute or disseminate or offer to do the same with respect to any
- unlawful, defamatory, harassing, abusive, fraudulent, infringing, obscene, or
- otherwise objectionable content.
- intentionally distribute viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or
- any other items of a destructive or deceptive nature.
- conduct or forward pyramid or similar schemes.
- transmit content that may be harmful to minors.
- illegally transmit another's intellectual property or other proprietary information
- without such owner's or licensor's permission.
- use the Services to violate the legal rights (such as rights of privacy and publicity) of
- others.
- promote or encourage illegal activity.
- interfere with other users' enjoyment of the Service.
- create multiple user accounts in connection with any violation of the Agreement or
- create user accounts by automated means or under false or fraudulent pretences.
- sell, trade, resell or otherwise exploit for any unauthorized commercial purpose or
- transfer any Services account.
- modify, adapt, translate, or reverse engineer any portion of the Services.
- remove any copyright, trademark or other proprietary rights notices contained in or
- on the Services.
- reformat or frame any portion of the web pages that are part of the Services.
- use the Services in connection with illegal peer-to-peer file sharing.

4. Written Communications

The provision of this Service entails that the principal means of communication with you will be mainly electronic. The GoM will contact you by email or provide you with information by posting notices on the Service. You agree to electronic communications and acknowledge that all tender, contract, notice and other related communication that the GoM provides electronically are deemed as equivalent as paper communications.

The service may dispatch automated notifications in the form of email and / or SMS (which may be set by you through the Service itself). The GoM does not assume any responsibility for the non-delivery of such automated notifications which can be attributed to a number of reasons outside its control. It is your

responsibility to ensure that your e-mail client's configuration is properly set (such as "email anti-spamming" rules) to allow the receipt of email notifications from the Service.

5. Non Repudiation

As a registered user, you agree that any actions performed by means of your login credentials (like communicating with economic operators, publishing notices and calls for tender, unlocking tenders, evaluating and awarding tenders) will be attributed to you.

6. Data Protection

The GoM shall process all personal data according to the Data Protection Act as well as any other applicable law or guidelines published from time to time. The GoM shall not transfer any personal data to any other third party unless consent to do so is received from you, or the GoM is required to disclose such data by law. As data subject, your rights under the Data Protection Act shall apply.

7. Account Termination

The Terms of Use will continue to apply until terminated by either you or by GoM as set out below.

If you want to terminate your use of the Service, you may do so by notifying the System Administrator at any time.

The GoM may at any time, terminate its legal agreement with you if:

(a) you have breached any provision of the Terms of Use (or have acted in manner which clearly shows that you do not intend to, or are unable to comply with the provisions of the Terms of Use); or

(b) the GoM is required to do so by law;

(c) the Service Provider with whom the GoM offered the Services to you has terminated its relationship with the GoM or ceased to offer the Services to you; or

(d) your Organisation's Management within the Service de-activates your account or your account is automatically de-activated by the Service due to reaching the number of failed login attempts set by the Service Administrator.

When the Terms of Use come to an end, all of the legal rights, obligations and liabilities that you and the GoM have benefited from, been subject to (or which have accrued over time whilst the Terms of Use have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of the Laws of Malta shall continue to apply to such rights, obligations and liabilities indefinitely.

Downtime Policy
For the Electronic Public Procurement System (e-PPS)

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Summary

This policy relating to the Electronic Public Procurement System (ePPS) downtime sets a plan to respond to a given system unavailability. In particular it attempts to address both planned and unplanned system downtime.

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1 Introduction

This policy sets a plan to respond to ePPS (www.etenders.gov.mt) unavailability, both planned and unplanned. In respect of the latter, it sets out to define four different types of unavailability, chiefly, short-term system unavailability that impacts the tender submission deadline for a CfT, short-term system unavailability that does not impact the tender submission deadline of any CfT, long-term system unavailability and system unavailability not attributed to the ePPS.

Whenever improvements to this policy are identified the Department of Contracts (DoC) and the Malta Information Technology Agency (MITA) reserve the right to update the policy. It is the user's responsibility to check the policy regularly.

2 Aim

The aim of the policy is to ensure the non-discriminatory and transparent award of contracts through the electronic portal at the same time guaranteeing equal treatment between economic operators.

3 Responsibility

Ultimate responsibility for downtime recovery lies jointly with MITA and the Department of Contracts.

Both stakeholders are required to recognise their role in the event of downtime and adhere to the instructions in this policy.

All errors and / or faults with the ePPS must be reported immediately to the Department of Contracts in the first instance on e-mail: info.contracts@gov.mt, or by fax on +356 2124 7681 or telephone on +356 2122 0212. This is extremely important as the Department of Contracts will have to inform the Supplier about any type of system unavailability, so that they can investigate, in liaison with MITA and, if necessary, with third parties supporting eID and myBills, exchange technical information, identify the cause of the problem, and eventually advise/assist the Department of Contracts and / or MITA to take the optimum course of action.

4 Definition

For the purpose of this document planned downtime will mean that the ePPS is taken off line for a specified amount of time on a specified date and time. This will usually be for routine maintenance and upgrades.

Unplanned downtime will mean that the ePPS is offline at anytime for any unexpected reason *that is* ***not attributed to the end-user environment****, including but not limited to ePPS eID failure impacting eID users of ePPS, myBills failure impacting ePPS users attempting an online payment before submitting their tender, and MITA network impacting all Government of Malta (GoM) ePPS users and causing problems to the end-user community.*

5 Planned downtime

All planned downtimes will be published in the ePPS news section. It is the responsibility of users to check for any planned downtimes through the news section of
the ePPS.

6 Unplanned downtime

Important! - Clause 2.h of the "Terms of Use for Economic Operator Users" which is available at www.etenders.gov.mt states the following: *Economic Operators take full responsibility to submit the electronic documentation required well before the tender submission deadline in order to avoid last minute upload restrictions. You agree that the GoM will not be responsible for late submissions due to reasons outside its control (such as Internet latency, service unavailability, online payment failure, Internet access).*

Short-term system unavailability that impacts the tender submission deadline for a Call for Tenders (CfT)

Depending on the type and timing of the unavailability, the tender submission deadline might be extended in accordance with the legal parameters afforded for such instances. In such a case, upon the system becoming available again, all tenderers registered for a CfT would receive automatically an e-mail informing them that the CfT details have changed.

On the other hand, if the ePPS is unavailable for the last ten (10) hours preceding the closing date for the submission of offers, thus forbidding Economic Operators (EOs) from submitting their tender electronically, the Department of Contracts in consultation with MITA, may decide to cancel the particular call for tenders (CfT) where all tenders received before system unavailability will remain encrypted and locked once the deadline for the particular Call for Tenders (CfT) is reached.

Short-term system unavailability that does not impact the tender submission deadline of any CfT

For such type of unavailability, where there is no impact to tender submission deadlines, no particular measure would be necessary. Nevertheless, some of the measures mentioned in the preceding section may be adopted in this case as well (e.g. tender submission deadline extension may be granted).

Long-term system unavailability

Where the ePPS is completely inoperable; system or connectivity, for at least seven (7) consecutive calendar days, the Department of Contracts will either extend the date for the submission of offers or cancel the impacted call for tenders in accordance with the legal parameters afforded for such instances.

System unavailability not attributed to the ePPS

There are several instances where the ePPS may become unavailable and although it may not be attributed directly to the ePPS it will still impact economic operators. There are several possible scenarios leading to system unavailability not directly attributable to ePPS and therefore this policy does not intend to cater for all eventualities. Instead, it sets out to define two of the most common scenarios which could lead to this type of system unavailability and broad courses of action which may be adopted depending on the length of the system unavailability. The following are a sample of such scenarios and possible solutions:

- Without prejudice to Clause 2.h of the 'Terms of Use for Economic Users', in case of a network problem which can be attributed to the GoM network for the 24 hours preceding the closing date and time of the call for tenders, thus potentially impacting some or all users, the Department of Contracts will cancel the impacted call for tenders.
- Without prejudice to Clause 2.h of the 'Terms of Use for Economic Users' in the case of a problem related to the myBills Portal and the Government payment gateway, during the 24 hours preceding the closing date and time of the call for tenders, thus potentially blocking some or all users from

effecting payment, the Department of Contracts in liaison with MITA shall offer assistance to economic operators by offering an alternative method of payment through a bank transfer facility while at the same time, allowing them to upload their offer through the ePPS. If this is not possible, the Department will cancel the impacted call for tenders.

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